SUPREME COURT, U. S.

APR 30 1974

MICHAEL RODAK, JR., CLERK

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1973

No. 73-1633

TIMOTHY O'CONNELL,

Petitioner,

vs.

STATE OF OHIO,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

The petitioner Timothy O'Connell respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of Ohio entered in this proceeding on February 1, 1974.

OPINIONS BELOW

The opinions of the Supreme Court of Ohio and of the Court of Appeals, First Appellate District of Ohio appear in the Appendix hereto.

JURISDICTION

The judgment of the Court of Appeals of Ohio, First Appellate District, was entered on October 1, 1973 affirm-

ing petitioner's conviction dated January 31, 1973. The Supreme Court of Ohio affirmed conviction on February 1, 1974 and this petition of certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. § 1257 (3).

QUESTIONS PRESENTED

1. Whether the prosecution can use an alleged confession stemming from questioning initiated by a law eforcement officer after a person has been taken into custody when the prosecution did not demonstrate the use of procedural safeguards enumerated in the *Miranda* v. *Arizona* decision and effective to secure the Fifth Amendment's privilege against self-incrimination.

2. Whether it is a denial of due process to exclude circumstantial evidence; liability coverage, car damage, and a newspaper report of weather conditions; where this evidence would illuminate the central issue in the case whether the accused had knowledge that an accident had occurred.

STATUTORY PROVISIONS INVOLVED

Ohio Revised Code

§ 4549.02 Stopping after accident; exchange of identity and vehicle registration.

In case of accident to or collision with persons or property upon any of the public roads or highways, due to the driving or operation thereon of any motor vehicle, the person so driving or operating such motor vehicle, having knowledge of such accident or collision, shall immediately stop his motor vehicle at the scene of such accident or collision until he has given his name and address.

STATEMENT OF THE CASE

On December 11, 1972 an alleged car accident occurred on Colerain Avenue, Hamilton County, Ohio involving the accused driving a Ford Pinto in southerly direction and Mary Jo Mulholland driving a Volkswagen in a southerly direction. Miss Mulholland's vehicle was touched on the left door by the right rear side of the other vehicle which continued along Colerain Avenue without stopping after contact had been made. A Deputy County Sheriff happened upon the scene, identified the License Plate Number as the accused's and apprehended the accused outside his residence approximately one hour and a half after the alleged accident. The defendant denied being in an accident but the policeman without giving the defendant the Miranda warings as to his constitutonal rights cited the defendant to Hamilton County Municipal Court for leaving the scene of an accident, 4549.02 Ohio Revised Code.

HOW FEDERAL QUESTION IS PRESENTED

Although the police officer testified at the trial that the defendant "was not even aware of what was going on" he introduced over defendant's objection and denial an alleged oral confession which tended to indicate that the defendant had knowledge that an accident occurred.

Secondly, the defendant attempted to introduce circumstantial evidence; such as the amount of automobile damage, liability insurance coverage, and a newspaper report on the extraordinary number of accidents on that subject night; as relevant to the question whether a reasonable man would have knowledge of such an accident. Although the case was tried without a jury the court denied these proffers of evidence.

The Court of Appeals of Ohio affirmed conviction on that basis that the *Miranda* ruling as to confessions does not extend to misdemeanor cases in Ohio. *State* v. *Pyle,* 19 Ohio St. 2d 64. It further stated that the denial of defendant's proffer of circumstancial evidence was not prejudicial.

REASONS FOR GRANTING THE WRIT

1. THE DECISION BELOW CONFLICTS WITH THE FEDERAL STANDARD THAT THE PROSECUTION MAY NOT USE INCULPATORY STATEMENTS UNLESS IT DEMONSTRATES THE USE OF PROCEDUAL SAFEGUARDS EFFECTIVE TO SECURE THE FIFTH AMENDMENT'S PRIVILEGE AGAINST SELF-INCRIMINATION. MIRANDA v. ARIZONA, 384 U.S. 436(1966).

The Supreme Court of Ohio erroneously contends that the Miranda decision is applicable only to defendants accused of felonies and not those accused of misdemeanors. *State* v. *Pyle,* 19 Ohio St. 2d 64. No offense can be deemed "petty" where imprisonment for six months (as in the instant case) is authorized. *Baldwin* v. *New York,* 399 U.S. 66 (1970). Due process should not be subject to mere arithmetic progression. The *Miranda* warnings protect against the abuse of coerced confessions as utilized in this proceeding.

2. THE DECISION BELOW RAISES SIGNIFICANT DUE PROCESS PROBLEMS IN THE THE COURT SHOULD HAVE ADMITTED COLLATERAL FACTS FROM WHICH THE CENTRAL ISSUE, THE DEFENDANT'S LACK OF KNOWLEDGE OF THE ACCIDENT, MAY BE INFERRED AS A PROBABLE CONSEQUENCE.

The exclusion of evidence dealing, respectively, with the cost of repairs to the car of the witness allegedly struck by the accused, to the fact that it had been paid for by accused's insurer, and a newspaper article concerning the extraordinary number or accidents that night due to the weather was a denial of due process because these facts were material and relevant to whether a reasonable man would have knowledge of such an accident. *Hill* v. *State*, 14 Ohio L. Ab. 610 (1933), 21 Ohio Jur. 2d Evidence § 246.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Supreme Court of Ohio.

Respectfully submitted

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COUNSEL FOR PETITIONER

APPENDIX

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO

HAMILTON COUNTY, OHIO

No. C-73123

CITY OF CINCINNATI,
Plaintiff-Appellee,

vs.

TIMOTHY O'CONNELL,
Defendant-Appellant.

DECISION

(Dated October 1, 1973)

Messrs. Thomas E. Luebbers and Michael S. Schwartz, 222 E. Central Parkway, Room 108-B, Cincinnati, Ohio 45202, for Plaintiff-Appellee,

Mr. James W. Gustin, 601 Second National Building, Cincinnati, Ohio 45202, for Defendant-Appellant.

PER CURIAM.

This cause came on to be heard upon the appeal, the transcript of the docket, journal entries and original papers from the Hamilton County Municipal Court, the transcript of the proceedings, the assignments of error and briefs, oral arguments having been waived.

Appellant lists as his four assignments of error certain general propositions or affirmative statements of law. These are not, of course, assignments of error phrased or presented in any fashion that can be ruled upon by this Court. Thus, appellant's first assignment states:

> "Where a defendant is charged with a violation of Ohio Revised Code Section 4549.02 (leaving the scene of an accident) and the question of the defendant's knowledge of the accident is in dispute, collateral facts from which the existence or non-existence of the fact in issue, the defendant's knowledge of the accident, may be inferred should be admitted into evidence."

Whatever may be the virtue of this as an abstract statement of law, it does not point out wherein the trial court erred to appellant's prejudice. Since all of the assignments are similarly postulated, we are forced, in order to accord appellant a review of his trial, to scan the body of appellant's argument as an attempt to reframe his assignments of error into some reviewable form.

Under this first "assignment of error", appellant objects to the ruling of the trial court in sustaining appellee's objection to three instances of proffered testimony, or lines of examination, bearing, appellant argues, upon his absence of knowledge of the accident. We have examined the record in each of these cases (dealing, respectively, with the cost of repairs to the car of the witness allegedly struck by appellant, to the fact that it had been paid for by appellant's insurer, and a newspaper article concerning other accidents on the night in question), and find no error in the ruling of the trial court therein prejudicial to appellant. Appellant's first assignment of error is without merit.

Appellant's second and fourth assignments of error call into question whether judgment of the trial court was contrary to the manifest weight of the evidence, the second assignment being directed particularly toward the element of knowledge or *scienter* of the appellant. We have examined the record as a whole, and find credible and probative evidence to support every element of the offense charged. Indeed, we find the judgment of the trial court to

have been, under the facts adduced, inevitable. Appellant's second and fourth assignments are accordingly overruled.

Appellant's third assignment of error is phrased as follows:

> "Where a police officer uses coercive measures to obtain an alleged admission, such evidence should be excluded when the officer did not first advise the defendant of his rights under the Constitution."

Under this, appellant argues that the court erred in permitting the officer to testify over objection as to certain statements made by appellant during an interview following the accident. Appellant recognizes, in his argument, that *State* v. *Pyle*, 19 Ohio St. 2d 64, declined to extend the *Miranda* ruling to misdemeanor cases in Ohio, but argues that a caveat inserted therein by footnote as to coerced confessions, is applicable to the instant cause. However, since we are unable to discover the slightest suggestion in the record of anything remotely resembling the "coercive police interrogation methods" referred to in the footnote to the *Pyle* case, we are unable to find any error in the admission of the statements in question, all of which appear to have been freely given to the officer by the appellant. Appellant's third assignment of error is without merit.

It is, therefore, ordered by this Court that the judgment of the Hamilton County Municipal Court be, and the same hereby is, affirmed.

HESS, P. J., SHANNON and PALMER, J. J.

PLEASE NOTE:

The Court has placed of record its own entry in this case on the date of the release of this Decision.

THE SUPREME COURT OF OHIO

1974 TERM

To wit: February 1, 1974

THE STATE OF OHIO,)

City of Columbus.)

City of Cincinnati, Appellee, vs. Timothy O'Connell, Appellant.	No. 73-925 **Appeal from the Court of Appeals for Hamilton County**

This cause, here on appeal as of right from the Court of Appeals for Hamilton County, was heard in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

It is further ordered that a copy of this entry be certified to the Clerk of the Court of Appeals for Hamilton County for entry.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court

this ..... day of ..... 19...

..... Clerk

..... Deputy

THE SUPREME COURT OF THE STATE OF OHIO

1974 TERM

To wit: February 1, 1974

THE STATE OF OHIO,)
City of Columbus.)

City of Cincinnati, Appellee, vs. Timothy O'Connell, Appellant.	No. 73-925 **Motion for an Order Directing The Court of Appeals for Hamilton County to Certify Its Record**

It is ordered by the Court that this motion is overruled. COSTS:

Motion Fee, $20.00, paid by James W. Gustin.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court

this ..... day of ..... 19...

..... Clerk

..... Deputy